



State of Wisconsin  
**Department of Health and Family Services**

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Scott McCallum, Governor  
Phyllis J. Dubé, Secretary

Date: June 6, 2002

To: County Departments of Community Programs Directors  
County Departments of Developmental Disabilities Services Directors  
County Departments of Human Services Directors  
County Departments of Social Services Directors  
County Health Officers  
Family Care, Care Maintenance Organizations Directors  
Family Care Resource Centers Directors  
PACE and Partnership Program CEOs  
Wisconsin Counties Association

From: Phyllis J. Dubé  
Secretary

Re: Implementing Health Insurance Portability and Accountability Act (HIPAA)

All Wisconsin counties, the Department of Health and Family Services (DHFS), and our business partners have less than one year to comply with the privacy requirements of the federal Health Insurance Portability and Accountability Act (HIPAA). We have about one and one half years to comply with the requirements for standard electronic transactions. To meet these deadlines, all counties must be actively working toward compliance. This letter is to ensure that counties are aware of their responsibilities for HIPAA compliance and of the DHFS activities in their support.

Please recall that counties are "covered entities" and must comply with HIPAA in the following situations. (PACE and Partnership Programs are covered entities as health plans).

- If they submit claims for health care or conduct other standard administrative transactions electronically.
- If they submit claims to Medicare, unless they are a small provider<sup>1</sup>.
- If they meet the definition of "health plan" in providing or paying for health care in a county-funded program.
- As administrators of a county General Relief Medical program.
- As Care Management Organizations in the Family Care program.
- As business associates of DHFS in administering the Medicaid Home and Community Based Services waiver programs.
- As administrators of COP.

Since Secretary Leean's letter to you about HIPAA in February of 2001, DHFS has continued to educate county agencies about this important federal mandate. We held regional orientation sessions and a statewide conference in Stevens Point. We are maintaining a website with information and links. We have been working with the Wisconsin County Human Services Association (WCHSA) on various HIPAA issues. Unfortunately, much of our effort has been

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<sup>1</sup> A small provider is a provider of services with less than 25 FTE employees or a physician, practitioner, facility or supplier (other than provider of services) with fewer than 10 FTE employees.

directed at determining which statewide programs are health plans under HIPAA. Uncertainty about this basic question has hindered compliance progress and diverted resources. For statewide, county administered programs, DHFS has currently determined only the Medicaid Home and Community Based Services waiver programs, COP, Family Care, and General Relief Medical to be health plans. We anticipate resolving the remaining questions (about the status of mental health and substance abuse programs) soon and being able to put all our efforts toward implementation.

Counties have expressed frustration and apprehension over HIPAA, and with reason. We are all finding compliance to be complex and too few resources are available for the required analysis, planning and implementation. The promise of real future increases in the efficiency of health care administration unfortunately does not provide the time or other resources needed now for implementation.

Compliance with the federal HIPAA law and regulations is ultimately the responsibility of each legal entity covered by them, including counties. Because DHFS has a very real stake in our statewide human service programs and our county business partners successfully and timely complying with HIPAA, DHFS is applying some of its limited resources to helping counties with compliance. Following are the current and some of the planned activities in support of local compliance.

- 1) Working with WCHSA, we are conducting a statewide survey to determine the health plan status of the remaining uncertain statewide programs: mental health and substance abuse. I anticipate a determination in July.
- 2) We are working with WCHSA representatives to select one or two affordable software tools to support gap analysis and track compliance. Such should at least partially substitute for private sector consultation that is often unaffordable for counties. We will be looking at the possibility of a bulk-purchase or enterprise-type license for reduced unit costs. I have asked staff to also consider possible partial state funding to further reduce the cost to counties, if there is interest. Our target for a recommendation is July.
- 3) At its May 21 Board meeting, DHFS presented to WCHSA the concept of a DHFS-operated "clearinghouse service" as an affordable option for at least partial county compliance with the HIPAA transaction rule. This would provide a below market cost way, especially for smaller counties, to handle standard electronic claims submitted by providers in the Home and Community Based Services waiver programs and Family Care. We are investigating whether federal funding constraints would allow us to offer this for other programs.
- 4) DHFS staff is nearing completion of a paper on considerations in formally designating DHFS or specific parts as a covered entity under HIPAA. We intend to share this paper as a guide for counties in making their own covered entity designations.
- 5) DHFS is comparing current SPC codes with national codes and Medicaid local codes to identify discrepancies and needed changes. Wisconsin Medicaid is collaborating with other State Medicaid programs to recommend national code changes. DHFS will share evolving code set information, as it becomes available.
- 6) DHFS intends to file HIPAA transaction rule compliance extension requests for the affected statewide programs we directly administer, such as Medicaid, BadgerCare and Well Women Screening. Counties will need to independently file extensions as health plans for any

General Relief Medical program, for any other county-funded program the county has determined meets the definition of a health plan, and where the county is a provider. Counties that electronically bill Medicaid or Medicare (by October 2003 larger providers have no option with Medicare) will need to submit their own extension requests as providers. Any county organization need submit only one request as a provider, regardless of how many health plans it bills. DHFS understands the advantage of filing a single statewide extension request for programs administered by counties such as home and community based waivers and COP. Because implementation plans may vary by county, however, we do not know if this is practical. We intend to discuss the best approach with WCHSA as the due date approaches during the summer. There does not appear to be any compelling need to file earlier.

- 7) DHFS staff is currently documenting the flows of "protected health information" in our DCTF facilities. This analysis will help us decide which parts of our Department to designate as covered entities, tell us which disclosures to include in our privacy notices, and identify where we need to execute business associate agreements. We plan on sharing with counties our approach once it has been proven effective.
- 8) During June, DHFS will begin developing policies for privacy rule compliance. We are planning to develop these on a department-wide basis rather than within each affected organizational unit. We intend to share these with counties through WCHSA as possible models, as they evolve.
- 9) DHFS legal staff has completed a preemption analysis of two key state statutes (s. 146 and s. 51.30). We have made this available through WCHSA and to the HIPAA Collaborative of Wisconsin. We stand ready to work with county Corporation Counsel offices and their association to address additional, identified questions of preemption, such as the sharing of information within human service departments provided in s. 46.23.
- 10) We are currently working with the statewide HIPAA Collaborative of Wisconsin (COW) on the possibility of a separate workgroup on local governmental issues. If HIPAA COW and local representatives agree such a group would be effective, in addition to the above mentioned activities, DHFS is willing to co-chair it.
- 11) DHFS is investigating the affordability and workability of a set of two-day regional compliance training sessions for counties. These would be conducted as soon as we can arrange them, but probably not before August or September. They would concentrate on tools and techniques for gap analysis, compliance planning, and compliance remediation. Transaction, privacy and security rules would be covered. This would hopefully be another alternative to individual consultant contracts, to complement materials provided through the above noted activities including the gap analysis and compliance tracking software.

The above efforts to assist counties will be supplemented with others as DHFS further develops its own HIPAA compliance capabilities. Regardless of how much assistance DHFS is able to provide counties, *it is critical that each county begin, accelerate or continue its own compliance activities.* There is a wealth of information available on websites and through voluntary collaboration groups like HIPAA COW, GIVES (Government Information Value Exchange for States) and WEDI SNIP (Workgroup for Electronic Data Exchange Strategic National Implementation Process). Their websites can be accessed through the DHFS HIPAA NOW website ([www.dhfs.state.wi.us/HIPAA](http://www.dhfs.state.wi.us/HIPAA)).